

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE TRANSFER OF THE PARTNERSHIP)	
INTERESTS OF LEWISPORT TELEPHONE)	
COMPANY, INC. IN KENTUCKY RSA #3)	CASE NO. 92-222
CELLULAR GENERAL PARTNERSHIP TO)	
UNITED STATES CELLULAR CORPORATION)	

O R D E R

On May 26, 1992, Lewisport Telephone Company, Inc. ("Lewisport") and United States Cellular Corporation ("United States Cellular") filed a notice of transfer and request for order, which the Commission will treat as an application, wherein Lewisport proposes to transfer its 20 percent interest in Kentucky RSA #3 Cellular General Partnership ("Kentucky RSA #3") to United States Cellular. Because both United States Cellular and Lewisport are controlled by Telephone and Data Systems, Inc. ("TDS"), the Commission was requested to issue an order confirming Lewisport and United States Cellular's belief that the transfer does not require Commission approval under KRS 278.020. Also, since Lewisport and United States Cellular do not believe a change of control will result from the transfer, neither intends to file the adoption notice required by 807 KAR 5:011, Section 11. In the alternative, Lewisport and United States Cellular requested the Commission grant approval to consummate the transfer if the Commission determines that a change in control will result from the transfer and that prior approval is necessary.

FINDINGS

KRS 278.020 has two subsections, (4) and (5), which require Commission approval prior to acquisitions or transfers of interests in utilities. KRS 278.020(6) provides several exceptions to the requirements of Commission approval of acquisitions found in KRS 278.020(5). Specifically, (6)(b) of KRS 278.020 states: "Subsection (5) of this section shall not apply to any acquisition of control of any . . . {utility by an acquirer who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such utility, including any entity created at the direction of such utility for purposes of corporate reorganization"

Accordingly, if the acquirer in this proposed transaction, United States Cellular, is determined to be under common control with the utility to be acquired, Kentucky RSA #3, Commission approval under KRS 278.020(5) is not required.

United States Cellular is controlled by TDS, which also controls Lewisport, the proposed transferrer of the 20 percent interest of Kentucky RSA #3. Based on the particular fact pattern of this case, where the acquirer is virtually wholly-owned by TDS, and where the interest in the utility proposed to be transferred is wholly-owned by TDS, the Commission finds that the exception to Commission approval based on common ownership found in KRS 278.020(6) applies and that Commission approval of the acquisition under KRS 278.020(5) is not necessary.

KRS 278.020(6)(b) explicitly states that it is an exception to KRS 278.020(5) only. Lewisport and United States Cellular

submit that the entire statute must be read as a whole according to rules of statutory construction and that the 278.020(6)(b) exception to obtaining prior Commission approval must therefore not apply only to KRS 278.020(5), as the statute provides, but also to KRS 278.020(4). This proposition is not accepted by the Commission. The language of the statute is plain and the intent of the legislature is clear. Sections 4 and 5 of the statute do not address the same individuals. Section 5 only speaks to an acquirer of utility interests while Section 4 applies to one who acquires ownership or control of a utility as well as one who transfers ownership or control. Lewisport's obligation to seek Commission approval of the transfer is triggered by KRS 278.020(4), not KRS 278.020(5). The Commission finds that KRS 278.020(4) is applicable to the proposed transfer.

The Commission must grant its approval of the transfer if the acquirer has the financial, technical, and managerial abilities to provide reasonable service.

The Commission finds that United States Cellular possesses the financial, technical, and managerial abilities to provide reasonable service to the public and that the transfer is for a proper purpose and consistent with the public interest. United States Cellular manages and invests in cellular systems throughout the country and its holdings make it the ninth largest cellular entity in the United States. The proposed transfer will not impact the customers of Kentucky RSA #3 insofar as there will be no changes in services or in the management of the utility. The proposed transfer, as described in the joint application, is

consistent with the requirements of KRS 278.020(4) and should be approved.


IT IS THEREFORE ORDERED that:


1. The proposed transfer shall be and hereby is approved.
2. United States Cellular shall give notice to the Commission within 30 days of the closing of the proposed transfer.
3. United States Cellular shall file with the Commission a copy of the executed purchase agreement within 30 days of its execution.
4. In the event the transfer does not take place, United States Cellular shall immediately notify the Commission in writing that it will not be assuming the 20 percent interest in Kentucky RSA #3.

Done at Frankfort, Kentucky, this 26th day of June, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director, Acting